84-398 (2)

NO.

Office - Supreme Court, U.S
FILED
SEP 12 1984
ALEXANDER L. STEVAS
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1984

MARY ELLEN KIMBLE
Petitioner,

v.

THE WORTH COUNTY R-III BOARD
OF EDUCATION
Respondent.

WRIT OF CERTIORARI
TO THE MISSOURI COURT OF APPEALS,
WESTERN DISTRICT

APPENDIX

Jerold L. Drake
Stephens and Drake
Jefferson Building
Post Office Box 400
Grant City, MO 64456
(816) 564-2321
Counsel of Record
for Petitioner

97PP

TABLE OF CONTENTS

	Page
Opinion and Order of the Missouri Court of Appeals, Western District	A-1
Decision and Order of the Circuit Court of Worth County, Missouri	A-44
Decision and Order of the Worth County R-III Board of Education	A-48
Order Denying Application for Transfer to the Missouri Supreme Court	A-59
Superintendent Bruner's Statement of Charges Against Ms. Kimble	A-61
Affidavits of Bank Employees	A-66
Affidavit of Mary Ellen and Larry Kimble	A-70
Transcript of Hearing Before School Board	A-73

IN THE MISSOURI COURT OF APPEALS

WESTERN DISTRICT

MARY ELLEN KIMBLE,	)	
	)	
Plaintiff-Respondent,	)	No. WD 34,022
	)	
VS.	)	
	)	
THE WORTH COUNTY R-III BOARD OF EDUCATION	)	
	)	OPINION FILED:
	)	
Defendant-Appellant.	)	MARCH 20, 1984

APPEAL FROM THE CIRCUIT COURT OF
WORTH COUNTY, MISSOURI

Honorable Montgomery L. Wilson, Judge

BEFORE SOMERVILLE, P.J., NUGENT AND LOWENSTEIN, JJ.

Following a public hearing pursuant to § 168.118, RSMo 1978, Mary Ellen Kimble, a "permanent teacher", was found by The Worth County R-III Board of Education to have engaged in "immoral conduct" (§ 168.114.1(2), RSMo 1978), and her indefinite contract was terminated. An appeal was taken to the Circuit Court of Worth County which reversed

the decision of The Worth County R-III Board of Education (hereinafter Board) and ordered that Mary Ellen Kimble (hereinafter Kimble) be reinstated, returned to permanent teacher status, and entitled to compensation for the period suspended from work.

The matter reaches this court on an appeal by the Board from the judgment entered by the Circuit Court of Worth County. The circuit court reversed the decision of the Board on the grounds that it "was arbitrary, capricious and unreasonable", constituted "an abuse of discretion", and "was unsupported by competent and substantial evidence upon the whole record." The circuit court further held "that there was not competent and substantial evidence upon the whole record . . . that the alleged 'immoral conduct' rendered the teacher unfit to teach or that the

teacher's teaching ability was adversely affected in any way." Parenthetically, the judgment of the circuit court evaporates insofar as having any bearing on judicial review at the appellate level due to strictures imposed thereon in contested administrative cases, infra.

Section 168.120(2), RSMo 1978, provides that an appeal from the decision of the Board shall be governed by the provisions of Chapter 536. In terms of administrative review this was a contested case (§ 536.010(2), RSMo 1978) and therefore the scope of review for both this court and the circuit court is statutorily prescribed by § 536.140, RSMo 1978.[1]

Review of contested administrative cases has been judicially addressed on numerous occasions. Reference is made to the following cases in the context of the instant

appeal. Neither the circuit court nor this court reviews the decision of the Board de novo. Michler v. Krey Packing Co., 363 Mo. 707, 253 S.W.2d 136, 141 (banc 1952). This court does not review the decision of the circuit court; to the contrary, each reviews the decision of the Board. Edmonds v. McNeal, 596 S.W.2d 403, 407 (Mo. banc 1980). Although all evidence before the Board is considered on judicial review, both the circuit court and this court are precluded from substituting their judgment on the evidence and neither may set aside the Board's decision unless it is unsupported by competent and substantial evidence on the whole record or is otherwise invalid. Harrod v. Board of Education, 500 S.W.2d 1, 6 (Mo. App. 1973). The evidence must be considered in the light most favorable to the Board's decision,

together with all reasonable inferences which support it. Id. Determination of the credibility of witnesses is a function of the Board and entitled to deference on judicial review. Meredith v. Board of Education, 513 S.W.2d 740, 745 (Mo. App. 1974). If evidence before the Board warranted either of two decisions, the Board's decision is binding on judicial review, and it is irrelevant that there may be supportive evidence of an opposing view. Hanebrink v. Parker, 506 S.W.2d 455, 458 (Mo. App. 1974). Inclusion within the scope of judicial review of contested cases that the administrative decision must be supported by competent and substantial evidence on the whole record (§ 536.140.2 (3), RSMo 1978), is rooted in Art, V, § 18, Constitution of Missouri (as amended 1976). By reason of its constitu-

tional heritage, determination of whether an administrative decision in a contested case is supported by competent and substantial evidence on the whole record is of magnum importance.

The Board relies on one point on appeal, namely, its decision was supported by competent and substantial evidence on the whole record when reviewed in accordance with attendant judicial guidelines addressing the scope of judicial review. Kimble counters the Board's position on a variety of grounds. One, the Board's decision was not supported by competent and substantial evidence on the whole record. Two, "immoral conduct" as prescribed by § 168.114.1 (2), supra, is unconstitutionally vague in violation of Amendments V and XIV of the Constitution of the United States and Art. I, § 10, of the

Constitution of Missouri; moreover, the incidents relied on, in any event, did not constitute "immoral conduct". Three, the purported instances of "immoral conduct" did not render her unfit to teach. Four, the doctrine of laches barred two of the three incidents found by the Board to constitute "immoral conduct." All of the aforementioned grounds were raised by Kimble before the Board and reasserted in her petition for review in the circuit court.

The charge levelled against Kimble which culminated in termination of her indefinite contract by the Board was predicated upon three instances of alleged "immoral conduct" within the ambit of § 168.114.1 (2), supra. The three incidents constituting "immoral conduct", supra, were as follows: that during the 1973-74 school year a teapot which

was a prop in a school play was returned by Kimble after word was disseminated that it was missing; that during the 1976-77 school year she took $20 from gate receipts collected at a basketball game, although she refunded the money after being confronted about the matter; and that in February, 1982 she took a set of books belonging to the school district, indicated that they had never been received from the vendor when confronted about them, and then subsequently returned them to the school library. It is appropriate to note at this juncture that in a pedagogic context, Kimble served as teacher-librarian.

The Board made detailed findings of fact substantiating all three incidents set forth in the charge as constituting "immoral conduct", and, additionally, that her conduct

with respect thereto "required extra precautionary measures to supervise her", "had a negative effect on the student relationship and teacher relationship existing in The Worth County R-III School District", and that continuance of her employment "creates additional administrative and supervisory burdens as well as distrust among the staff and faculty and has an adverse and detrimental effect on the students, faculty and the educational process of The Worth County R-III School District."

As frequently occurs in contested cases, a close perusal of the instant record in toto reveals its share of contradictory evidence, conflicting inferences, and divergent theories. Be that as it may, when the whole record is considered in light of the attendant principles governing the scope of judi-

cial review of contested administrative cases, the conclusion is inescapable that the findings and decision of the Board were supported by competent and substantial evidence on the whole record and do not reflect that the Board abused its discretion or acted in an arbitrary, capricious or unreasonable manner. Any natural impulse for reviewing courts to substitute their judgment on the evidence for that of the administrative tribunal in contested cases has a momentum of its own which must be held in check.

Attention now focuses on whether the Board's decision was otherwise invalid by reason of any of the other infirmities attributed to it by Kimble. Her contention that the statutory basis (§ 168.114.1 (2), supra) upon which the Board's decision necessarily rested was "unconstitutionally vague", there-

by rendering it invalid, is laid to rest in Ross v. Robb, 662 S.W.2d 257, 259 (Mo. banc 1983):

> "In Thompson v. Southwest School District et al., 483 F. Supp. 1170 (W.D. Mo. 1980), the plaintiff, a teacher dismissed from service for engaging in 'immoral conduct,' alleged that section 168.114.1(2), RSMo 1978, was impermissibly vague and denied her due process of law. The court agreed that, in the abstract, the phrase 'immoral conduct' was constitutionally suspect under the strict standards of construction to be employed in criminal and first amendment contexts. Id. at 1179. The court went on to say, however, that the phrase was part of a statutory scheme; that, construed with the other subsections of the statute, the phrase is 'capable of being given a more precise judicial construction so as to avoid the vagueness issue.' Id. at 1180. The court concluded that immoral conduct relates to conduct rendering a teacher unfit for the performance of his duties. Id. More precisely, the court found that immoral conduct means 'conduct rendering plaintiff unfit to teach.' Id. at 1181. This analysis persuades denial of Ross's constitutional challenge." (emphasis added)

The foregoing logically brings this court to Kimble's bifurcated argument that the incidents relied on did not constitute "immoral conduct", and, even if subject to being so construed, failed to render her unfit to teach. This argument is soundly refuted by competent and substantial evidence permeating the whole record supporting both the conduct alleged and the fact that such rendered her unfit to teach, thus meeting the test of "immoral conduct" set forth in Ross v. Robb, supra. The taking of property belonging to another without consent, notwithstanding its return when confronted with such wrongdoing, breaches even the most relaxed standards of acceptable human behavior, particularly so with regard to those who occupy positions which bring them in close, daily contact with young persons of

an impressionable age. It is eminently proper to note that Kimble, in addition to her duties as librarian, taught "library" an "reference" skills at the elementary level o a regular basis, and on an incidental basis at the high school level.

Failure to invoke separate charges when each of the first two incidents occurred doe not unequivocally suggest they were considered de minimis or condoned, and any attempt to do so places them in a false perspective. All three incidents were relie on to show a continuing pattern of behavior which crested when the final incident occurred in February of 1982 immediately following which charges were lodged resultin in termination of Kimble's indefinite contract. Any argument that reliance upon the first two incidents was indicative of an

arbitrary, capricious and unreasonable attitude on the part of the Board is negated when all the incidents are collectively viewed as evidencing a pattern of continuing behavior.

Kimble's final contention, that the first two incidents relied upon should have been barred by the doctrine of laches, and failure to so treat them tainted the Board's decision with incurable prejudice, is unpersuasive. Admittedly, the first of said incidents occurred during the 1973-74 school year and the second occurred during the 1976-77 school year.

Assuming, arguendo, that the doctrine of laches is applicable in contested cases before administrative tribunals, reference is had to its salient principles. There is no fixed period within which a right or claim must be asserted in order that it avoid being

barred by laches; temporal limits are drawn in light of the circumstances of the particular case; mere delay, in and of itself, does not constitute laches; laches is a question of fact to be determined from all the evidence and circumstances adduced at trial; laches cannot be invoked to thwart right or justice, but only to defeat resultant prejudice, if not invoked, to one asserting it; and he who asserts laches carries the burden of proof. Metropolitan St. Louis Sewer District v. Zykan, 495 S.W.2d 643, 656-57 (Mo. 1973).

Prejudice which supports laches generally falls into one or the other of two categories, i.e., (1) loss of evidence which would support the position of one seeking to invoke laches with regard to the claim he is called upon to defend against, and (2) a

change of position by one seeking to invoke laches in a way that would not have occurred but for the delay. Rich v. Class, 643 S.W.2d 872, 877 (Mo. App. 1982).

Kimble does not claim that she was prejudiced by a change of position on her part due to delay in filing charges against her regarding the first two incidents. In terms of prejudice in its broadest sense, any delay is susceptible of the inference that the Board did not precipitously file separate charges on each of the first two incidents, but out of deference to Kimble abstained from doing so until a continuing pattern of behavior was evinced.

Kimble raises her claim of prejudice in an evidential context. Prejudice in an evidential frame of reference contemplates a loss of demonstrative evidence or the un-

availability of witnesses which or who could support the position of one seeking to invoke the doctrine of laches. Powell v. Zuckert, 366 F.2d 634, 638 (D.C. Cir. 1966). The burden of proof thereon rested on Kimble, which she failed to sustain. She neither asserted nor attempted to prove the loss of any demonstrative evidence which would have aided or benefited her. She neither asserted nor attempted to prove that any witnesses were unavailable who could have aided or benefited her. As a matter of fact all persons who were privy to the two incidents which she claims should have been barred by laches testified at the hearing. Moreover, the separate components which come into play in determining applicability vel non of the doctrine of laches must be balanced in each case by weighting each component in accor-

dance with the particular facts and circumstances presented. When such is done in the instant case the scales tip in favor of rejecting application of the doctrine of laches.

Cases involving termination of tenured teachers frequently project an aura of ambivalence, thereby giving indelible substance to the admonitory principle that courts sitting in judicial review should not substitute their judgment on the evidence in lieu of that of the decisional administrative body. The scope of judicial review of administrative decisions in contested cases is sharply etched and commands compliance in order to protect against unwarranted judicial excursions into matters exclusively within the province of the appropriate administrative tribunal. See Phipps v. School Dis-

trict, 645 S.W.2d 91, 95-96 (Mo. App. 1982).

On the basis of what has heretofore been said, this court holds that the decision and order of The Worth County R-III Board of Education should be, and hereby is, affirmed. Accordingly, the judgment of the Circuit Court of Worth County is reversed and the cause remanded with directions to the Circuit Court of Worth County to enter judgment affirming the decision and order of The Worth County R-III Board of Education.

Judgment reversed and cause remanded with directions.

RONALD L. SOMERVILLE
PRESIDING JUDGE

Lowenstein, J., concurs in opinion of Somerville, P.J.; Nugent, J., concurs in separate concurring opinion.

FOOTNOTES

[1]Section 536.140, RSMo 1978, insofar as here pertinent, reads as follows:

"1. The court shall hear the case without a jury and, except as otherwise provided in subsection 4, shall hear it upon the petition and record filed as aforesaid.

2. The inquiry may extend to a determination of whether the action of the agency

(1) Is in violation of constitutional provisions;

(2) Is in excess of the statutory authority or jurisdiction of the agency;

(3) Is unsupported by competent and substantial evidence upon the whole record;

(4) Is for any other reason, unauthorized by law;

(5) Is made upon unlawful procedure or without a fair trial;

(6) Is arbitrary, capricious or unreasonable;

(7) Involves an abuse of discretion. . . ."

IN THE MISSOURI COURT OF APPEALS

WESTERN DISTRICT

MARY ELLEN KIMBLE, Plaintiff/Respondent,	)	
vs.	)	No. WD 34,002
THE WORTH COUNTY R-III BOARD OF EDUCATION	)	Opinion Filed:
	)	March 20, 1984
Defendant/Appellant.	)	

APPEAL FROM THE CIRCUIT COURT OF
WORTH COUNTY, MISSOURI
FOURTH JUDICIAL CIRCUIT

Honorable Montgomery L. Wilson, Judge

BEFORE SOMERVILLE, P.J., NUGENT, J. AND LOWENSTEIN, J.

CONCURRING OPINION

I concur with Judge Somerville's able majority opinion but I respectfully disagree with the way it arrives at its conclusion.

Plaintiff is a tenured teacher and the

mother of two grown children. At the time of the hearing before the school board, plaintiff had been a teacher for over sixteen years. The teacher performance reports rendered each year by her superiors were good. In March, 1981, the report included these comments: "Does a fine job. Does a good job of teaching." Under the heading "Professional Characteristics" appears the comment, "Very co-operative in anything I've asked." Finally, the principal concluded with, "She is a fine librarian." Mrs. Kimble was the elected secretary-treasurer of the Community Teachers' Association. She and another teacher had founded and for three years had operated twice-yearly book fairs to raise money for the school library. She had been responsible for handling those funds.

In the fall of 1981 plaintiff's activity

on behalf of the teachers' association had brought her into sharp conflict with the Superintendent of Schools, Mr. Bruner, her chief accuser. Apparently he thought that Mrs. Kimble had personally appealed to individual school board members in violation of board policy. Mrs. Kimble testified that in her earlier confrontation with Mr. Bruner he had threatened to "have" her Missouri teacher's certificate, that he would see to it that she would never teach in their school again and had said, "You better watch everything you do from now on, because I would love to slap you with an unprofessional conduct suit." Mr. Bruner denied making those threats, but he testified that he had told Mrs. Kimble on November 19, 1981, that "any future problems of this nature would be handled by a dismissal procedure."

The statement of charges filed against Mrs. Kimble read as follows:

1. Immoral conduct as evidenced by your taking and continued lying concerning the circumstances surrounding the taking of a certain set of books, namely Through Golden Windows, from the Gum Drop Book Company, at Bethany, Missouri, on the 11th day of February, 1982, and continuing until said books were brought into the Elementary Principal's office of said school district by yourself on the 18th day of February, 1982.

Other instances involving your immoral conduct as set out above are as follows:

(a) The removal and subsequent return by you of the tea pot from the teacher's lounge during the 1973 - 74 school year.

(b) The removal and subsequent return of the battery jar in the 1974 - 75 school year.

(c) The shortage and subsequent replacement by you of gate receipts in the 1976 - 77 school year.

(d) The removal and subsequent return of Avon jewelry

> from the Elementary Library during the 1977 - 78 school year.
>
> (e) The removal of the cookbook from the teacher's lounge in the 1980 - 81 school year.
>
> As a result of the above course of conduct, you have proven yourself to be untrustworthy and have made it necessary to more closely supervise your school activities and responsibilities than is necessary with the rest of the teachers and this had adversely affected the normal operation of the educational system and its activities.
>
> . . . .
>
> You are hereby suspended with pay from this date from the active performance of your duties until a decision is rendered by the Board of Education.

All but three of these charges were dismissed prior to defendant's hearing.

Because of the deference this court must accord to the school board's decision, I agree with the majority that the whole record

includes competent and substantial evidence to support a finding that the plaintiff "is guilty of the immoral conduct of untruthfulness and taking property not her own without consent or permission."

The evidence adduced at the hearing was as follows.

The Teapot Incident:

During the 1973 - 74 school year, a teapot on loan to the school disappeared from a shelf in the teachers' lounge. A sign was placed in the lounge asking for its return. One day shortly thereafter, teacher Ann Waldeier was in the lounge and noted that the teapot was still missing. As she left the lounge, she noticed the plaintiff walking into the lounge with a manilla envelope under her arm. The envelope was not in the usual flattened condition. Ms. Waldeier continued

to watch the door to the lounge and saw that no one else entered or came out. From where she was standing she could not see the other door to the lounge. When the plaintiff came out of the lounge, Ms. Waldeier reentered and saw the teapot on the shelf and a manilla envelope in the trash.

Former Superintendent of Schools, Phil Burmeister, testified that he, Mrs. Kimble, Norma Maudlin, and Ann Waldeier met and discussed the return of the missing teapot. (Ms. Waldeier had testified that she was not present when Mr. Burmeister discussed the incident with the plaintiff.) According to Mr. Burmeister, Mrs. Kimble stated that she had found the teapot in the library. He asked her why she did not present the teapot to him "rather than just taking it into the lounge and leaving it." When asked about

Mrs. Kimble's response, he said "I don't remember any." Neither he nor anyone under his supervision had given Mrs. Kimble permission to take the teapot.

Mrs. Kimble testified that she did not remember anything about the teapot and that she never stole a teapot.

The Gate Receipts Incident:

During the 1976 - 77 school year, Judy Hoakison, a teacher, and the plaintiff worked together taking money for basketball games at the gate. At one of those games, Ms. Hoakison left the gate table and went into the gym for no longer than five minutes. She testified that when she left the table some gate receipts money was under the cash box. Upon her return, she saw Mrs. Kimble taking money "out from under the cash box and putting it into her purse." She equivocated

in her testimony whether she knew the money she saw Mrs. Kimble put in her purse was the same money that had been under the cash box. Ms. Hoakison admitted that her memory of the event was not as good now as it was at the time of the occurrence sometime in 1976-77.

Eldon Cowles, Superintendent of Schools in 1976-78 testified that he called Mrs. Kimble into his office about the gate-receipts incident. She denied that she ever took any monies from the receipts. She explained that she was making change for her child. Mr. Cowles said that a twenty dollar bill seen at an early count of the money was gone at the end of the game. Although he admitted that under their accounting system no way existed to confirm a shortage, his "impression [was] that the amount of money wasn't there." He testified that Mrs. Kimble

wrote a twenty dollar check to the school when confronted with the incident and that he considered the matter closed at that time. He stated, "It was understood between us that that was it. That took care of it."

The plaintiff testified that she never took monies from the gate receipts and that she did not find in her cancelled checks for December, 1976 and January, 1977, any twenty dollar check to the school. Her bank statements and checks for December, 1976 and January, 1977, were admitted into evidence. Although no twenty dollar check to the school was included in the exhibits, the December, 1976 bank statement shows that two twenty dollar checks were written. Only one of these twenty dollar checks is included in the exhibits.

The Book Incident:

The school board's evidence was as follows:

On Thursday, February 11, 1982, Mrs. Kimble went to the Gum Drop Bookstore in Bethany, Missouri. She selected three boxes of books worth approximately $400. One box contained a set entitled Through Golden Windows. The next morning, Mrs. Rose Findley, principal of the elementary school, and Marsha Scott saw this set in the library of the elementary school before school started that morning. On Monday, February 15, Mrs. Kimble called the bookstore and talked to Pam Fitzgerald, secretary of the firm. Mrs. Kimble told her that the set of Through Golden Windows, was not put into her car when she left the bookstore warehouse and that she did not have them when she got to

school. An unproductive search of the warehouse was made.

Patty Hall, another secretary, talked with Mrs. Kimble after she made her call to the bookstore. She told Patty Hall that she had not picked up the set of books in question and that she had called the bookstore and that they were going to send another set. Pam Fitzgerald related plaintiff's message to Gail Fitzgerald, one of the owners of the Gum Drop Bookstore. Ms. Fitzgerald checked with the warehouse workers. They said that plaintiff had taken the missing books and put them in her car herself. Ms. Fitzgerald then called the school unsuccessfully trying to reach Mrs. Kimble. She left a message with Betty Calhoun, a school secretary. The message read:

> Gum Drop Books called and said they couldn't find the books, Through Golden Windows. The boys that helped you load them said they could remember you carrying them to the car.

The plaintiff did not return Ms. Fitzgerald's call. Ms. Findley, the principal, became aware of the situation on Monday, February 15, when the message was brought to her. On February 18, Ms. Findley called the bookstore and brought plaintiff to the phone. Early in the conversation, Mrs. Kimble stated that she received only two boxes of books. Ms. Findley heard Mrs. Kimble say on the telephone, "No, they are not in the trunk," and "Let's not worry. They'll turn up somewhere." Ms. Findley contacted Superintendent Bruner on Wednesday, February 17, about the missing books. On Thursday, the 18th, after Mrs. Kimble's

telephone conversation with Ms. Fitzgerald, Mr. Bruner confronted the plaintiff with the problem. Her first statement was, "I don't know where they are." She also said that she had picked up three boxes of books in Bethany. Mr. Bruner indicated that he expected the books returned to the school. After the close of school that day, Mrs. Kimble went home and then returned to school and delivered the missing books to Ms. Findley.

Plaintiff's testimony regarding the book incident was as follows:

After she had purchased the books at the Gum Drop Bookstore and had them put into her trunk by the employees of the bookstore, she drove to St. Joseph and stayed overnight at her daughter's. A snow fell that night and she drove to school early the next day before the snow plows were out. By the time she got

to school, she had a severe headache. She asked another person to remove the books from the trunk and to put them in the library. Although very ill, she stayed at school all day. "Evidently," on her way out, she "picked up this box of Through Golden Windows to take them home, look at and catalog over the week-end," and she "evidently put it in the trunk of the car and went home." She went to bed and slept until the next morning. On Monday, she went down to look at the books in the library and the box was not there. She then called the bookstore and told them that they evidently did not get one box of the books when she was there on Thursday. She asked them to check and see if they were still down there. She then went to the office and told the school secretary to hold the bill because one of the boxes was not at

the school and that they needed to wait until they got it straightened out before they paid the bill. On occasion she took books home to catalog them. She did so to save the school sixty cents for catalog cards. She normally put the books in the back seat or in the seat beside her when she took them home. After being confronted by the principal about the missing books, she searched the library, the work rooms, and all of the teachers' rooms. She then went home and, although she knew they were not there, she looked all around home. As she was sitting down she thought, "Well, maybe they are still out in the car. So I went out and looked in the car again, and I looked in the trunk and that's where they were." She then brought the books back and returned them.

Evidence was also produced by the school

board that extra supervision of Mrs. Kimble was needed and that these incidents had a negative and detrimental effect on the students, faculty, and the educational process of the school district.

Discussion:

While I agree with the majority's ultimate finding that these incidents may be said to constitute "immoral conduct," § 168.114.1 (2)[1], rendering the plaintiff "unfit to teach," see Ross v. Robb, 662 S.W.2d 257, 259 (Mo. 1983) (en banc), I arrive at that conclusion for different reasons. None of the three complaints against Mrs. Kimble charge that she intentionally and wrongfully deprived the district of its property. Moreover, the majority apparently thinks that the school board is not required to prove that the teacher intentionally and wrongfully

deprived the district of its property, that any taking of the property would constitute immoral conduct. The court's opinion states that "[t]he taking of property belonging to another, notwithstanding its return when confronted with such wrongdoing, breaches even the most relaxed standards of acceptable human behavior, particularly so with regard to those who occupy positions which bring them in close, daily contact with young persons of an impressionable age."

Indeed, if one intentionally and wrongfully takes another's property, no matter what the value, such conduct would constitute "immoral" behavior. But, I cannot agree that any taking of property, particularly after it is later returned, constitutes immoral conduct. If so, a teacher could be discharged if he inadvertantly took a school pencil or a

book home, forgot about it for a week, and then returned it. Similarly, a teacher could be discharged if he intentionally took a school grade book home to compute his students' grades and later returned it to school. The former example illustrates a taking which lacks intent and the latter illustrates a taking which is not wrongful. The legislature, in enacting §168.114(2) could not have intended that such conduct would amount to immoral conduct warranting termination of a teacher's contract. Because this limited issue is one of statutory interpretation, a question of law, we are free to substitute our own judgment. See National Labor Relations Board v. Hearst Publications, Inc., 322 U.S. 851 (1944). Therefore, I would say that to hold the taking of property to constitute immoral

conduct, the court must be convinced that the taking was intentional and wrongful.[2]

Starting with that premise, the next issue is then whether or not competent and substantial evidence appears upon the whole record to support the conclusion that the plaintiff intentionally and wrongfully deprived the district of its property. See Harrod v. Board of Education, 500 S.W.2d 1, 6 (Mo.App. 1973); §536.140(3). This inquiry, unlike the earlier issue, is a mixed question of law and fact. And, "where the question is one of specific application of a broad statutory term in a proceeding in which the agency administering the statute must determine it initially, the reviewing court's function is limited." National Labor Relations Board v. Hearst Publications, Inc., 322 U.S. 851, (1044).[3]

The school board here determined that the plaintiff's acts constituted immoral conduct. I would affirm this determination for two reasons. In the first place, the whole record contains competent and substantial evidence to support the factual finding that the plaintiff intentionally and wrongfully deprived the district of its property. Next, the whole record also includes competent and substantial evidence to support the finding that the plaintiff was untruthful with school personnel and was untruthful at her hearing.

Finally, the record contains substantial evidence that plaintiff's conduct has rendered her "unfit to teach." Cf. Thompson v. Southwest School District, 483 F.Supp. 1170, 1182 (W.D.Mo. 1980) (where no evidence was

developed indicating that plaintiff's conduct rendered her unfit to teach).

ANTHONY P. NUGENT, JR., JUDGE

FOOTNOTES

[1]All sectional references are to Revised Statutes of Missouri, 1978.

[2]Fortunately, because the property in question in this case was of some value, although relatively slight, we need not address the moral philosopher's question whether taking of property of little or no value constitutes "immoral conduct."

[3]There the issue was whether news boys were "employees" of newspaper publishers as used in the National labor [sic] Relations Act. The NLRB refused to follow common-law tort rules in defining an "employee," and defined the term in the context of policies underlying the NLRB. They defined employees as any workers who need the Act's protection. The Supreme Court held that "as a matter of law, the common law approach would be wrong." But it left it to the Board to decide, as a question of fact, whether particular individuals were employees within the "need for protection" test. Thus the Court found that "the Board's determination that specified persons are 'employees' under this Act is to be accepted if it has 'warrant in the record' and a reasonable basis in law." National Labor Relations Board v. Hearst Publications, Inc., supra, at 860.

IN THE CIRCUIT COURT OF WORTH COUNTY, MISSOURI
DIVISION I

MARY ELLEN KIMBLE, PLAINTIFF,	)	
VS.	)	Case No. CV982-11CC
THE WORTH COUNTY R-III BOARD OF EDUCATION, RESPONDENT.	)	

JUDGMENT

Now on this 24th day of June, 1982, the court takes up and considers the above cause.

This is an action for dismissal of a tenured teacher for alleged immoral conduct pursuant to Section 168.114(1)(2) R.S.Mo. (1978). The plaintiff teacher requested a public hearing as permitted by Section 168.116 R.S.Mo. (1978). After a public hearing in accordance with Section 168.118 R.S.Mo. (1978) dismissal was ordered by the respondent Worth County R-III Board of Educa-

tion and the plaintiff teacher has appealed to this court (Section 168.120 R.S.Mo. 1978).

The charges against the teacher alleging immoral conduct were as follows, to-wit:

1. "The removal and subsequent return by you of the tea pot from the teacher's lounge during the 1973-74 school year."
2. "The shortage and subsequent replacement by you of gate receipts in the 1976-77 school year."
3. "Immoral conduct as evidenced by your taking and continued lying concerning the circumstances surrounding the taking of a certain set of books, namely Through Golden Windows, from the Gum Drop Book Company, at Bethany, Missouri, on the 11th day of February, 1982, and

continuing until said books were brought into the Elementary Principal's office of said school district by yourself on the 18th day of February, 1982."

After considering all the evidence in this case including the transcript of the public hearing held on March 23, 1982, and also the exhibits introduced at said hearing, this court finds that the decision of the respondent Worth County R-III Board of Education to dismiss the plaintiff teacher was arbitrary, capricious or unreasonable (Section 536.140(2)(6) R.S.Mo. (1978); that it involved an abuse of discretion (Section 536.140(2)(7) R.S.Mo. (1978); and that the alleged acts of immoral conduct were unsupported by competent and substantial evidence upon the whole record (Section 536.140(2)(3)

R.S.Mo. (1978). The court further finds that there was not competent and substantial evidence upon the whole record at the hearing on March 23, 1982, that the alleged "immoral conduct" rendered the teacher unfit to teach or that the teacher's teaching ability was adversely affected in any way.

It is therefore ordered that the decision of the Worth County R-III Board of Education be reversed and the teacher, Mary Ellen Kimble, be reinstated and restored to permanent teacher status and that she be entitled to receive compensation for the period she has been suspended from work, all in the manner provided by Section 168.120(4) R.S.Mo. (1978).

JUDGE

BEFORE THE WORTH COUNTY R-III
BOARD OF EDUCATION

Board of Education of Worth County
R-III School District

v.

Mary Ellen Kimble

FINDINGS OF FACT AND DECISION

The above cause came on for public hearing before the Board of Education of Worth County R-III School District March 23, 1982 at the request of Mary Ellen Kimble and said board having duly considered the evidence adduced and the demeanor and testimony of the witnesses presented and being fully advised in the premises makes the following findings and conclusions of law.

1. All the requirements prescribed in Sections 168.114 through 168.118, Revised Statutes of Missouri, 1969, as amended, were

fully complied with in these procedures and the hearing was held and conducted according to law.

2. It is stipulated that Mary Ellen Kimble is a permanent teacher under the terms of the Missouri "Teacher Tenure Act", Sections 168.102 through 168.130, Revised Statutes of Missouri, 1969 as amended.

3. Mrs. Kimble resigned her position with the Worth County R-III School District by letter dated February 19, 1982 and subsequently withdrew her resignation on the 20th day of February, 1982 which was received by the Board on the 21st day of February, 1982.

4. Mrs. Kimble was notified of the statement of charges filed against her by personally receiving said statement of charges March 1, 1982, all as required by subsections 1 and 3, 168.116 RSMo.

5. Thereafter on the 10th day of March, 1982, Mrs. Kimble requested a hearing on the statement of charges against her.

6. On March 22, 1982, Mrs. Kimble was notified, through her attorney, in further response to her request for information concerning the statement of charges, to delete from said statement of charges as originally issued paragraphs 1(b), 1(d), 1(e) and all of paragraph 2, including paragraphs 2(a) and 2(b).

7. March 23, 1982, at 7:30 P.M. a public hearing was held to hear evidence on paragraphs 1, 1(a) and 1(c) of the statement of charges filed against Mary Ellen Kimble.

8. This board finds from the evidence not disputed by Mrs. Kimble that she fully understood the charges as set forth in the statement of charges served on her March 1,

1982.

9. This board finds from the evidence that during the 1973-1974 school year, Mrs. Kimble was accused of taking a teapot from the teacher's lounge without permission; that Mrs. Kimble later returned the teapot to the teacher's lounge; that Mrs. Kimble was not truthful with the Superintendent of Schools during his investigation of the incident; that because of Mrs. Kimble's conduct, the Superintendent of Schools felt that he could not trust her, that Mrs. Kimble required special supervision and that Mrs. Kimble's conduct had a negative effect on the school system.

10. This board finds from the evidence that during the 1976-1977 basketball season, Mrs. Kimble, while selling tickets for a basketball game, took Twenty Dollars ($20.00)

from the gate receipts without permission and put it in her purse; that the next morning she was asked to meet with Superintendent of Schools, Eldon Cowles, at which time Mrs. Kimble paid back the Twenty Dollars ($20.00) to the Worth County School District; that Mrs. Kimble required special supervision and extra precaution had to be taken by the administration in regard to Mrs. Kimble in order to protect the Worth County School District.

11. The Board finds Teacher's Exhibits "L, M, N, O" inconclusive for the defendant because checks were missing that were listed on the bank statement.

12. This board finds from the evidence-that on February 11, 1982, Mrs. Kimble went to the Gumdrop Book Company in Bethany, Missouri, and got three boxes of books, one box of which contained Through Golden Windows,

for the Worth County R-III School District; that on February 12, 1982 Mrs. Kimble brought all three boxes of books into the Worth County R-III School Building; that on February 15, 1982, Mrs. Kimble called Gumdrop Book Company and told them that she had not received Through Golden Windows and further told the school secretary not to pay the bill as she had not received Through Golden Windows; that on February 18, 1982 Mrs. Kimble talked by phone to Gumdrop Book Company and told them that she had not received Through Golden Windows, that she had looked in her car and in her trunk and the books were not there; that from February 15, 1982 to February 18, 1982, Mrs. Kimble denied receiving three (3) boxes of books from Gumdrop Book Company.

13. This board finds from the evidence

that on February 18, 1982, Mrs. Kimble left the school building after the close of the school day, drove to her home and returned to the school building with the books, Through Golden Windows, which she delivered to the elementary principal.

14. This board finds from the evidence that Mrs. Kimble took without permission one box of books, a 10 volume set entitled Through Golden Windows belonging to the Worth County R-III School District and that Mrs. Kimble did not tell the truth to the Gumdrop Book Company, the school secretary and the Superintendent of Schools while they were trying to locate the missing books.

15. This board finds from the evidence that Mrs. Kimble is presently and has in the past been employed as librarian in the Worth County R-III School District working pri-

marily as elementary librarian and teaching elementary students and part time as high school librarian, that through Mrs. Kimble's position, Mrs. Kimble is in contact with the entire student body of Worth County R-III School District; that as librarian, Mrs. Kimble has a flexible schedule and more unsupervised or non-classroom time than the average faculty member employed by this School District.

16. This board finds from the evidence that each superintendent of schools from 1973 to present has been involved in incidents with Mrs. Kimble in which she has taken property from the Worth County School System without permission, that each superintendent has found Mrs. Kimble to be untruthful and each superintendent has been required to take extra precautionary measures to supervise

Mrs. Kimble.

17. This board further finds from the evidence that the conduct of Mrs. Kimble has a negative effect on the student relationships and teacher relationships existing in the Worth County R-III School District.

18. This board further finds from the evidence that the continued employment of Mary Ellen Kimble is not justified; that Mary Ellen Kimble is guilty of the immoral conduct of untruthfulness and taking property not her own without consent or permission; that the continued employment of Mary Ellen Kimble creates additional administrative and supervisory burdens as well as distrust among the staff and faculty and has an adverse and detrimental effect on the students, faculty and the educational process of the Worth County R-III School District.

Therefore on the 6th day of April, 1982, the Board of Education of the Worth County R-III School District did vote on the motion duly made and seconded to terminate the indefinite contract of Mary Ellen Kimble, effective this date, and said motion carried unanimously.

Mrs. Kimble's motion to dismiss the statement of charges and request for attorney fees are both denied.

_____
President

ATTEST

_____
Secretary

Received 9th day of April, 1982.

_____
Mary Ellen Kimble

I certify that I have on this 9th day of April, 1982, delivered a true copy of the attached Findings of Fact and Decision to Jerold L. Drake, attorney for Mary Ellen Kimble, at his request.

John C. Andrews
Attorney for Worth County
R-III School Board

NO. 65992

IN THE SUPREME COURT OF MISSOURI
No. WD 34022

May Session 1984

Mary Ellen Kimble, Plaintiff-Respondent,

vs. TRANSFER

The Worth County R-III Board of Education,
Defendant-Appellant.

Now at this day, on consideration of Plaintiff-Respondent's Application to transfer the above entitled cause from the Western District Court of Appeals, it is ordered that said application be, and the same is hereby denied.

STATE OF MISSOURI-SCT.

I, THOMAS F. SIMON, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the May Session thereof, 1984, and on the 19th day of June, 1984, in the above entitled cause.

Given under my hand and seal of said Court, at the City of Jefferson City, this 19th day of June, 1984.

_____ Clerk.

_____ D.C.

WORTH COUNTY SCHOOL DISTRICT R-III

Robert S. Bruner, Superintendent
Stephen Meyer, Secondary Principal
Rose Findley, Elementary Principal
Grant City, Missouri 64456

February 28, 1982

To: Mary Ellen Kimble

Subject: Statement of Charges - Suspension

You are hereby notified of the following charges filed against you by Robert S. Bruner, Superintendent of Schools, Worth County R-III School District, which are grounds for termination of your indefinite contract of employment with the school district.

1. Immoral conduct as evidenced by your taking and continued lying concerning the circumstances surrounding the taking of a certain set of books, namely

Through Golden Windows, from the Gum Drop Book Company, at Bethany, Missouri, on the 11th day of February, 1982, and continuing until said books were brought into the Elementary Principal's office of said school district by yourself on the 18th day of February, 1982.

Other instances involving your immoral conduct as set out above are as follows:

(a) The removal and subsequent return by you of the tea pot from the teacher's lounge during the 1973 - 74 school year.

(b) The removal and subsequent return of the battery jar in the 1974 - 75 school year.

(c) The shortage and subsequent replacement by you of gate receipts in the 1976 - 77 school year.

(d) The removal and subsequent return

of Avon jewelry from the Elementary Library during the 1977 - 78 school year.

(e) The removal of the cookbook from the teacher's lounge in the 1980 - 81 school year.

As a result of the above course of conduct, you have proven yourself to be untrustworthy and have made it necessary to more closely supervise your school activities and responsibilities than is necessary with the rest of the teachers and this has adversely affected the normal operation of the educational system and its activities.

2. Willful or persistent violation of, or failure to obey the school laws of this state or the published regulations of the board of education employing you by:

(a) Directly contacting, by written

and/or oral communications, the members of the Worth County R-III School District Board of Education specifically on or about November 18, 1981, February 19 and 20, 1982, all in violation of the published regulations of said Board of Education #204.7 and #405.7.

(b) On or about December 10, 1981, you ordered a book from Baker and Taylor Company without having a signed request form or purchase order in violation of published regulation of said Board of Education #203.3, page 4 of the Faculty Handbook for the Worth County R-III School District.

Please be advised that you are entitled to request a hearing on the charges filed against you, which hearing will be held on the 23rd day of March, 1982, at 7:30 P.M. in

the Superintendent's Office for Worth County R-III School District in Grant City, Missouri, if a request for a hearing is made.

In the event a request for a hearing on the charges is not requested by you or by someone on your behalf within ten days after receipt of this notice, your contract may be terminated by the Board.

You are hereby suspended with pay from this date from the active performance of your duties until a decision is rendered by the Board of Education.

Done by order of the Board of Education made the 28th day of February, 1982.

Robert S. Bruner
Superintendent of Schools
Worth County R-III School District

STATE OF MISSOURI)
) SS.
COUNTY OF WORTH)

AFFIDAVIT

Now comes Ocie L. Hughes , after being duly sworn, states upon her oath that she is an employee of the Citizens Bank of Grant City, Missouri, and that she has searched the records at said bank and found the following twenty dollar checks written by either Mary Ellen Kimble or Larry Kimble on their account at the bank from November 15, 1976, until January 15, 1977, to-wit:

1. One twenty dollar check signed by Larry Kimble dated November 17, 1976, to Larry King;
2. One twenty dollar check signed by Mary Ellen Kimble dated November 19, 1976, to Riteway;

3. One twenty dollar check signed by Mary Ellen Kimble dated December 27, 1976, to Kurtis Kimble.

_____

Title: Assistant Cashier

On this 2 nd day of April, 1984, before me personally appeared Ocie L. Hughes, to me known to be the person described in the foregoing instrument and also known by me to be an employee at the Citizens Bank of Grant City, Missouri, and who executed the foregoing instrument and acknowledged that she executed it as her free act and deed.

_____

Notary Public

My commission expires Aug. 30, 1984.

STATE OF IOWA)
) SS.
COUNTY OF RINGGOLD)

AFFIDAVIT

Now comes Virginia Main, after being duly sworn, states upon her oath that she is an employee of the Security State Bank, Mount Ayr, Iowa, and that she has searched the records at said bank and found the following twenty dollar checks written by either Mary Ellen Kimble or Larry Kimble on their account at the bank from November 15, 1976, until January 15, 1977, to-wit:

1. One twenty dollar check signed by Larry Kimble, dated December 24, 1976, to H & W Electric;
2. One twenty dollar check signed by Larry Kimble, dated December 13, 1976, to Algie Saville.

_____

Title:Bookkeeping Supervisor

On this 2nd day of April, 1984, before me appeared Virginia Main, to me known to be the person described in the foregoing instrument and also known by me to be an employee at the Security State Bank, Mount Ayr, Iowa, and who executed the foregoing instrument and acknowledged that she executed it as her free act and deed.

_____

Notary Public

My commission expires 9-8-85.

STATE OF MISSOURI)
) SS.
COUNTY OF WORTH)

AFFIDAVIT

Now comes Mary Ellen Kimble and Larry Kimble, of lawful age, and after being duly sworn state upon their oaths that at the school board hearing of March 23, 1982, their bank statements and cancelled checks were introduced into evidence and that said exhibit included the following cancelled checks in the amounts of twenty dollars each for the period of time from November 15, 1976, to and including January 15, 1977, to-wit:

A. Security State Bank, Mount Ayr, Iowa:

1. One $20.00 check signed by Larry Kimble dated December 24, 1976, to H & W Electric for plumbing;

2. One $20.00 check signed by Larry Kimble dated December 13, 1976, to Algie Saville for fish; and

B. Citizens Bank of Grant City, Missouri:

1. One $20.00 check signed by Larry Kimble dated November 17, 1976, to Larry King for labor;

2. One $20.00 check signed by Mary Ellen Kimble dated November 19, 1976, to Riteway for groceries;

3. One $20.00 check signed by Mary Ellen Kimble dated December 27, 1976, to Kurtis Kimble, her son.

Your affiants state that all of said checks [ALL CHECKS WRITTEN DURING DEC. 1976 L.L.K.] together with the bank statements were entered into evidence at the school

board hearing and that there were no $20.00 checks to the Worth County School District.

Mary Ellen Kimble

Larry Kimble

Subscribed and sworn to before me this 31st day of March, 1984.

Notary Public

My commission expires June 12, 1984.

Transcript of March 23, 1982, Hearing Before Worth County R-III Board of Education.

JUDY HOAKISON

a witness, being first duly sworn, testified upon her oath as follows:

. . . .

EXAMINATION

BY MR. ANDREWS:

Q Would you state your name, please.

A Judy Hoakison.

Q What is your address?

A Creston, Iowa.

Q What is your occupation?

A Now I'm substitute teaching.

Q Were you ever employed in Worth County R-III School District?

A Yes, I was.

Q During what years were you employed

here?

A I was here from 1975 until 1977, taught two years.

Q During that time, did you perform other duties other than teaching?

A Yes.

Q Did you ever work on the gate for basketball games?

A Yes, that was part of our duties.

Q And who would you work with on that?

A Another teacher.

Q And what other teachers did you work with?

A I worked with Mrs. Kimble.

Q Now what year was that?

A That was during 1976 and 1977, during the basketball season of that year.

MR. ANDREWS: Can all of the Board hear the witness?

CHAIRMAN LAMBERT: Just barely.

Q (By Mr. Andrews) How did that ordinarily operate when you were taking gate with another teacher?

A You had the cash box which they had, the Superintendent brought it for us at the gate. And you took the money as the people came in and made the change.

Q Was there any time during the evening that you would, one of you would leave the table?

A That night there was. There was a drawing of some kind and one of us had to go into the gym.

Q Who went into the gym?

A I went into the gym.

Q What, if anything, unusual occurred?

A When I left there was some money underneath the cash box and when I returned, Mrs. Kimble was putting the money in her

purse and the money under the cash box was gone.

Q How did it affect the way you dealt with other teachers?

A Well, I was still friendly with the other teachers. It didn't have that much with the other teachers. I still visited with Mrs. Kimble, too.

Q Have there been problems where you taught before such as that?

A No.

Q Is there a difference in the behavior of the teachers in the way they conduct themselves?

A Will you reword that, please.

Q Have you noticed a difference in the other schools that you have taught at as opposed to this school since that incident occurred?

A Well, just the -- you mean the attitudes between the teachers and relationships of the teachers?

Q Yes.

A Well, I've always got along. See, I haven't taught -- I taught half-time and I got along wonderfully with the teachers and it wasn't any problem.

. . . .

ANNE WALDEIER

a witness, being first duly sworn, testified upon her oath as follows:

DIRECT EXAMINATION

BY MR. ANDREWS:

Q State your name, please.

A Anne Waldeier.

Q And what is your occupation?

A Vocational home economics teacher.

Q How long have you been employed in this school?

A Sixteen years, I think.

Q And how long has Mrs. Kimble been on the staff?

A I think about the same. Longer, I think she was here when I came.

Q Do you recall the 1973-74 school year?

A Yes, parts of it.

Q Do you recall whether or not they had a school play that year?

A Yeah.

Q Do you know who provided the props for that play?

A Various individuals, I guess.

Q And do you know where the props were kept?

A On stage and in the teacher's lounge.

Q What, if anything, are you aware of that

happened which was unusual concerning any of the props that were kept in the teacher's lounge.

A A teapot disappeared.

Q Where was this last seen?

A On a book shelf in the teacher's lounge.

Q What was done in an effort to get that returned?

A On my part?

Q No, just on the part of the school personnel as far as you know?

A A sign was put up in the lounge stating that the teapot belonged to Lucille Maudlin and it was of no value to anyone else except for her and please return it.

Q Was the sign up for a period of time?

A Yes.

Q Did it seem to be important to the

school that it be returned?

A I would say it was important to an individual.

Q And when was it returned?

A I can't say. I don't know.

Q Do you know whether it returned?

A Yes. I don't know as what particular time or how long or anything after it disappeared.

Q Would you tell this Board what you recall about the return of that teapot?

A I was in the lounge and had noted that it was not there. I left the lounge and as I was leaving, I noticed Mrs. Kimble walking into the lounge carrying something and as I walked on to my room, stopped in the hall, and I noted that she came back out and I immediately went back up to the lounge and the teapot was

on the shelf.

Q Now what did you do -- excuse me, what did you see that Mrs. Kimble had at the time that she entered the door to the lounge?

A Just something under her arm.

Q What something? Can you be more definite than that?

A I recall it as being like a manilla mailing envelope.

Q Isn't ordinarily a mailing envelope pretty flat?

A Yes.

Q Was it in that condition?

A No, I'd say it was -- no.

Q When did you see that mailing envelope next?

A In the trash can.

Q Where?

A In the teacher's lounge.

Q At the same time that you observed the teapot?

A Yes.

Q During the time that you were gone from the door to the lounge, were you able to see who was coming and going.

A From the hall, yes.

Q Was that all the time that Mrs. Kimble was in that door.

A Yes.

Q Did you see anyone else enter that door?

A No.

Q Did you see anyone else leave that door?

A No.

MR. ANDREWS: I believe that is all I would have.

CROSS-EXAMINATION

BY MR. DRAKE:

Q And who has access to the lounge?

A All personnel.

Q Personnel, you mean teachers?

A Well, janitors, I presume.

Q Is it kept locked?

A No, sir.

Q So anyone can come in and go?

A Yes.

Q And as I understand your testimony, you have no knowledge with regard to any taking of a pot?

A No.

Q What you are talking about is a pot being replaced?

A Yes.

Q How many doors are there to the lounge?

A Two.

Q And so that a person can come into the lounge from different directions?

A Yes.

Q Did Mary Ellen ever tell you she took that pot?

A No.

Q And I know you mentioned that you saw the manilla envelope, but you didn't see the teapot under her arm?

A No.

Q And is it possible that there would be something else, could have been something else in that envelope besides the teapot?

A Yes.

Q Did you or anyone else file a complaint against Mary Ellen, when was this, 1973?

A I'm not sure, '74 or '75, I think. A

long time ago.

Q But you didn't file a complaint against her?

A No.

Q To your knowledge, no one else did?

A No.

Q Is Mary Ellen a good librarian?

A As far as I know, yes.

Q As far as you know, is she a good teacher?

A Yes, I don't know -- that's not my job.

Q Do you know of your own knowledge how this teapot incident affected her teaching ability and librarian ability?

A I'd say no, no.

Q You know of no way in which this incident affected her ability to teach and perform her duties as librarian?

A No.

* * * *

ROSE FINDLEY

a witness, being first duly sworn, testified upon her oath as follows:

DIRECT EXAMINATION

BY MR. ANDREWS:

Q Would you state your name, please.

A Rose Findley.

Q And what is your occupation?

A I'm Educator/Elementary Principal of the Worth County R-III Schools.

* * * *

Q Now how did the actions of Mrs. Kimble affect your duties as Elementary Administrator?

A Well, each administrator is advised of things that they must be aware of and, of course, it added a caution to your

job. Being aware that there might be a problem existing, you were more alert to that problem than you would have been otherwise.

. . . .

ROBERT BRUNER

a witness, being first duly sworn, testified upon his oath as follows:

DIRECT EXAMINATION

BY MR. ANDREWS:

Q Would you state your name, please.

A Robert Bruner.

Q And what is your occupation?

A Superintendent of Schools, Worth County R-III.

Q How long have you been involved in education?

A Thirteen years and nine of those in

school administration.

Q How long have you been Superintendent here at Worth County R-III?

A This is my fourth year.

* * * *

Q And what has the conduct of Mrs. Kimble in this instance -- what effect has that created upon the faculty of the school system?

A Anytime that there is something of this nature among the faculty members having to do with the faculty member, it creates -- it can create some friction among faculty members and break down on the close knit faculty that a faculty should be; and, of course, eventually down the line a quality educational program is not going to be achieved.

Q What effect specifically has her conduct

made necessary?

A It's made necessary, based on the teapot and the gate receipt incident, that when I first came to this school system, I had heard this and I, of course, instructed both the building principals that I expected close supervision in all people and especially Mrs. Kimble. I like to protect the teachers as well as I like to protect everybody else because the gate receipt is a good example.

I like to have two people setting there and setting there all times so there will not be any accusations thrown against one specific teacher if something does end up missing.

Q Are there any other problems that this has created?

A Well, it's created problems for myself

because I don't like to have to go through this because it just disrupts everything in the school system. Kids know what's going on. The staff members know what's going on and it disrupts the school.

PHIL BURMEISTER

a witness, being first duly sworn, testified upon his oath as follows:

DIRECT EXAMINATION

BY MR. ANDREWS:

Q State your name.

A Phil Burmeister.

Q What is your occupation?

A Superintendent of Schools.

Q And how long have you been employed in that occupation?

A This is my eleventh year.

Q Were you ever employed by the Worth County R-III School District?

A Yes, I was.

Q And during what years?

A From 1973-74 through 1975-76.

Q What position did you hold at that time?

A Superintendent of Schools.

* * * *

Q What was the effect of Mrs. Kimble's conduct upon the faculty and your supervision during the time you were here as a result of the teapot incident?

A Well, the immediate effect was, of course, a lot of discussion on the part of the faculty about whether Mrs. Kimble did or did not take things in general, the teapot specifically, and, of course, in a small community and in a school of

our size, that discussion I'm sure, had an effect on student relationships as well as teacher relationships.

As her supervisor, I was not her direct supervisor, but it did have an effect on the way in which her super-vision -- supervisor concluded actions for and about Mary Ellen Kimble.

Q Was this effect a good effect or a bad effect for the teaching situation?

A Well, we tried to get along with the situation that we felt was apparent. As to whether it was good or bad, I don't know. It was a negative effect, a definite negative factor in relationships that were occurring inside this school.

MARY ELLEN KIMBLE

the teacher, being first duly sworn, testified upon her oath as follows:

DIRECT EXAMINATION

BY MR. DRAKE:

Q Would you give your name to the Board, please.

A Mary Ellen Kimble.

. . . .

Q How long have you been a teacher at Worth County R-III?

A In January, it was sixteen years.

* * * *

Q Had [Mr. Bruner] on any prior occasion ever threatened you with an unprofessional conduct suit?

A Yes.

Q When was that, approximately?

A It was in November. We had a C.T.A. meeting and the question was raised at that meeting.

Q Mary Ellen, I am going to ask you not to go into that since that is not one of the charges. I'm just interested in the statement that was made.

A Okay. He called me into his office and he closed the door. When he closes the door, you know you've had it. He closed the door and he said, I don't know, something to the effect that I had talked to the School Board members. I had not gone through proper channels. I had talked to School Board members and he didn't like that, and I told him that I would talk to Kenneth Lambert anytime I wanted to about anything I wanted to. And he jumped up out of the chair and leaned across his desk and shook his finger at me. And he said, "If you do, I'll have your Missouri Teaching

Certificate. I'll see that you never teach in this school again," and he said, "You better watch everything you do from now on, because I would love to slap you with an unprofessional conduct suit."

Q Kenneth Lambert is your neighbor, is that right?

A Has been for quite a while.